

Montana Water Court  
PO Box 1389  
Bozeman, MT 59771-1389  
(406) 586-4364  
1-800-624-3270  
watercourt@mt.gov

IN THE WATER COURT OF THE STATE OF MONTANA  
CLARK FORK DIVISION  
KOOTENAI RIVER BASIN (76D)  
PRELIMINARY DECREE

\* \* \* \* \*

CLAIMANTS: Lloyd O. Miller Trust; Matthews Ranch LLC;  
Becky Coblentz; Phillip Coblentz; Eagle  
Valley Ministries Amish Community Church;  
Rebekah Miller; Elvie Miller

**CASE 76D-0232-R-2022**  
76D 503-00

OBJECTOR: Phillip Coblentz

**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree

with the content of this Master's Report.

## **MASTER'S REPORT**

### **Statement of the case**

Co-claimant, Phillip Coblentz, objected to the period of use and period of diversion identified by irrigation claim 76D 503-00.

The claim also received an issue remark. Issue remarks often result from Department of Natural Resources and Conservation ("DNRC") claims examination. Claims examination confirms the historical use of water right claims and identifies issues with claims.

Montana law requires the Water Court to resolve issue remarks and objections.

**If any co-claimant of claim 76D 503-00 did not sign the Verified Motion to Amend Water Right Claim 76D 503-00 discussed in this report and disagrees with the modifications to the claim, they should file an objection to this Master's Report.**

### **Issues**

1. Is Phillip Coblentz's objection to claim 76D 503-00 resolved?
2. Is the notice issue remark on claim 76D 503-00 resolved?

### **Findings of fact**

1. Irrigation statement of claim 76D 503-00 identified a May 15 to October 15 period of use.
2. A preponderance of evidence establishes the historical period of use and period of diversion for irrigation claim 76D 503-00 should be April 1 to October 15.
3. The Preliminary Decree abstract for claim 76D 503-00 identifies the historically accurate point of diversion.

### **Principles of law**

1. A properly filed Statement of Claim for Existing Water Right is prima facie

proof of its content. Section 85-2-227, MCA. Prima facie proof may be overcome by other evidence that proves, by a preponderance of the evidence, that an element of the prima facie claim is incorrect. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R. A preponderance of the evidence is a “modest standard” and is evidence that demonstrates the fact to be proved is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 348, 240 P.3d 628.

2. The Montana Water Court is permitted to use information submitted by the Department of Natural Resources and Conservation, the statement of claim, information from approved compacts, and any other data obtained by the Court to evaluate water right claims. Section 85-2-231(2), MCA.

3. Settlement, including the documents filed by a claimant where the claimant is the only party, is subject to review and approval by the Water Court. Rule 17(a), W.R.Adj.R.

4. If the settlement agreement expands or enlarges an element of a claim, evidence meeting the burden of proof must be provided. If the evidence does not meet the burden of proof, the element shall not be expanded or enlarged. Rule 17(b), W.R.Adj.R.

5. When resolving issue remarks, the Montana Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. Section 85-2-247(2), MCA.

6. The Montana Water Court has the authority to resolve issue remarks when the claim file and information available to the Court provide a sufficient basis to do so. Section 85-2-248(3), MCA.

## **Analysis**

### **Issue 1 – period of use/period of diversion objection**

Phillip Coblenz’s objection included a Verified Motion to Amend Water Right Claim 76D 503-00 signed by co-claimants, and an Affidavit in support of the expanded period of use and period of diversion.

Affiant Leonard H. Koskela attested that:

- he is 82 years old and has lived at the same address in Libby since 1959,
- he witnessed the irrigation of this field as early as 1959, and
- irrigation took place “as soon as the snow left around April 1<sup>st</sup> and continued through to harvest time.”

The claim file includes a copy of the Leonard H. Koskela Affidavit along with the Verified Motion to Amend Water Right Claim signed by co-claimants.

### **Conclusions of law**

The evidence entered into the record for period of use and period of diversion overcomes prima facie statement of claim 76D 503-00, justifies the modifications to the claim, and resolves Phillip Coblentz’s objection to claim 76D 503-00.

### **Issue 2 – issue remark resolution**

Claim 76D 503-00 appeared in the Preliminary Decree with the following issue remark:

POINT OF DIVERSION WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

The foregoing issue remark provided the opportunity for claimants and other water users to object to the claim. Phillip Coblentz’s objection to the period of use and period of diversion identified by claim 76D 503-00 is resolved by these proceedings. No one, including Phillip Coblentz, objected to the element identified by the issue remark on claim 76D 503-00.

### **Conclusions of law**

Preliminary Decree abstract 76D 503-00, except for the modified period of use and period of diversion recommended by this report, identifies its historically accurate elements. The issue remark appearing on the claim served its notice purpose.

## **Recommendations**

Irrigation claim 76D 503-00 should be modified as follows to accurately reflect historical use.

### **PERIOD OF USE AND PERIOD OF DIVERSION:**

~~MAY 15 TO OCTOBER 15~~

**APRIL 1 TO OCTOBER 15**

The issue remark should be removed from the abstract of claim 76D 503-00.

A Post Decree Abstract of Water Right Claim accompanies this report to confirm implementation of the recommendations in the state's centralized water right record system.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

### **Service via USPS Mail**

Lloyd O Miller Trust  
870 Meadowlark Ln  
Libby, MT 59923

Matthews Ranch LLC  
Rebekah Miller  
Elvie Miller  
50 Meadowlark Ln  
Libby, MT 59923

Becky Coblentz  
Phillip Coblentz  
38 Jehovah Dr  
Libby, MT 59923-4806

Eagle Valley Ministries Amish Community Church  
639 Meadowlark Ln  
Libby, MT 59923

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**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
KOOTENAI RIVER  
BASIN 76D**

**Water Right Number:** 76D 503-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:**

ELVIE MILLER  
50 MEADOWLARK LN  
LIBBY, MT 59923

REBEKAH MILLER  
50 MEADOWLARK LN  
LIBBY, MT 59923

EAGLE VALLEY MINISTRIES AMISH COMMUNITY CHURCH  
639 MEADOWLARK LN  
LIBBY, MT 59923

PHILLIP COBLENTZ  
38 JEHOVAH DR  
LIBBY, MT 59923

BECKY COBLENTZ  
38 JEHOVAH DR  
LIBBY, MT 59923 4806

MATTHEWS RANCH LLC  
50 MEADOWLARK LN  
LIBBY, MT 59923

MILLER, LLOYD O TRUST  
870 MEADOWLARK LN  
LIBBY, MT 59923

**Priority Date:** APRIL 20, 1917

**Type of Historical Right:** FILED

**Purpose (use):** IRRIGATION

**Irrigation Type:** SPRINKLER

**Flow Rate:** 2.00 CFS

**Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

**Climatic Area:** 4 - MODERATELY LOW

**Maximum Acres:** 190.00

**Source Name:** MCMILLAN CREEK

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NENESE	17	29N	30W	LINCOLN

**Period of Diversion:** APRIL 1 TO OCTOBER 15

**Diversion Means:** HEADGATE

**Period of Use:** APRIL 1 TO OCTOBER 15

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	50.00		SW	17	29N	30W	LINCOLN
2	5.00		SWNW	17	29N	30W	LINCOLN
3	90.00		SE	18	29N	30W	LINCOLN
4	45.00		S2NE	18	29N	30W	LINCOLN
<b>Total:</b>	<u>190.00</u>						